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Copyright, Fair Use, and Author Rights

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Copyright, Fair Use, and Author Rights

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Center for Continuing Education
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In the beginning ...

There is **Copyright**



- Belongs to author(s) automatically
- From the time work “is created in fixed form”
- Lasts for 95 years (currently)

Copyright = *exclusive* right to

- Distribute copies
- Make copies for distribution
- Make derivative works
translations, dramatizations, abridgements,
compilations, etc.
- Perform publically

... And to authorize others to do so.



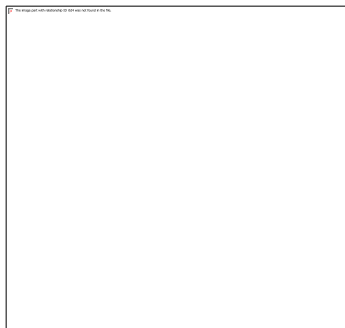
Creative Works

- Copyright only applies to “creative works”
- Lists of facts & figures or reproductions of pre-existing works cannot be copyrighted.
- “Mechanical” copies (xeroxes, scans, etc.) cannot be copyrighted.
- There must be some creative act.



Copyright applies to

- Written works
- Graphic works
- Music or sound
- Dramatic works
- Dance, mime, pantomime (as long as there exists a fixed notation or description of record)



Copyright does not apply to

- Facts
 - Ideas
 - Stories
 - Concepts
-
- It applies only to the particular way an author (or artist) has expressed those things.

**Just the
Facts**



Pre-existing works

- Pre-existing works in the public domain cannot be copyrighted; e.g. the Bible, the Constitution, the lyrics to “Sweet Betsy from Pike,” ...



Words & phrases

- Words & phrases cannot be copyrighted. This includes titles.



- However, some words, names, or phrases can be “trademarked”—which is a different process.



Copyright is property

- It can be:
- Sold
- Leased
- Licensed
- Transferred
- Inherited
- Divided



To whom does it belong ?

- The authors of a joint work are co-owners of the copyright in the work, unless there is an agreement to the contrary.



Copyright is federal law.

- Written by Congress, mentioned in the Constitution.
- Applies equally in all states.
- Administered by U.S. Copyright Office.
- International copyrights are secured by treaty.



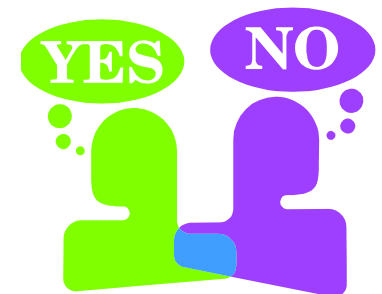
Copyright Registration



- While you may automatically own the copyright, you may also take the additional step of registering it with the US Copyright Office.
 - Cost = \$65 (\$35 if done online)
- Why would you do that?
 - If you sue someone for copyright infringement, you can only collect damages back to the date of registration.

What is in copyright ?

- pre-1923: nothing (“public domain”)
- 1923-1963: maybe/maybe not
only if © was renewed
- 1963-1976: probably
yes, if it had © notice
- post-1976: everything



Copyright renewal (1923-1963)

- Works published 1923-1963 have passed into public domain if they were not renewed in their 28th & 57th years of coverage.
- These can be checked at the website:

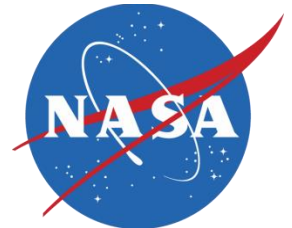
<http://www.scils.rutgers.edu/~lesk/copyrenew.html>



US Govt docs cannot be ©

Works created by officers or agents
of the United States government
(in the performance of their duties)
are **not subject to copyright**

Includes: USDA, USFWS, NOAA, NIH, DOD, NASA, etc.



“Fair Use”



The doctrine of “fair use”—Section 107

“ the fair use of a copyrighted work, including such use by reproduction in copies ... for purposes such as criticism, comment, news reporting, teaching (including multiple copies for classroom use), scholarship, or research, is **not** an infringement of copyright. ”



The 4 criteria for determining “fair use”:

1. nature of the use
2. nature of the work
3. amount of work used
4. effect on market for or value of work



Libraries exemption, §108:

“It is not an infringement of copyright for a library ... to reproduce no more than one copy ... of a work, ... or to distribute such copy
..., if ... →



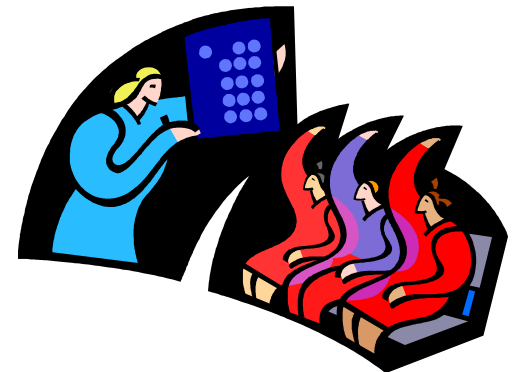
Libraries can make & distribute one copy if →

1. the reproduction is made without any purpose of direct or indirect commercial advantage; and
2. the collections of the library are open to the public; and
3. the reproduction or distribution of the work includes a notice that the work may be protected by copyright.



Instructional exemption §110:

“A copyrighted work may be displayed under the supervision of an instructor as part of a class offered by an accredited nonprofit educational institution if it is directly related to the content, and is limited to students officially enrolled in the course.”



Therefore, an instructor may do the following:

- read or display a copyrighted work in class
- distribute a section of a copyrighted work
- place a copy of a copyrighted work on electronic reserve at the Library
- place a copy of a copyrighted work on Blackboard



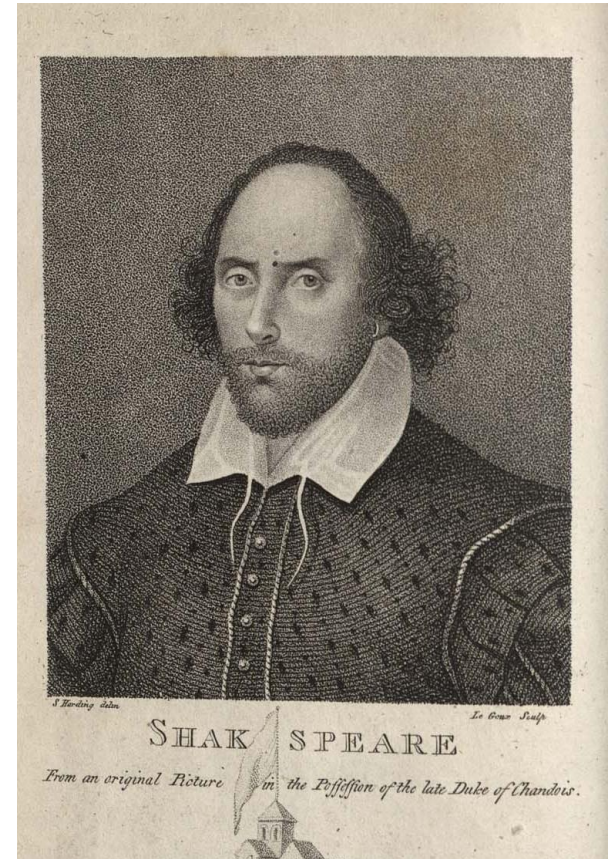
An instructor may not:

- distribute complete copies of a copyrighted work
- post a copyrighted work on a public-accessible website
(without permission)



Let's talk about

Author Rights



Now, suppose ...

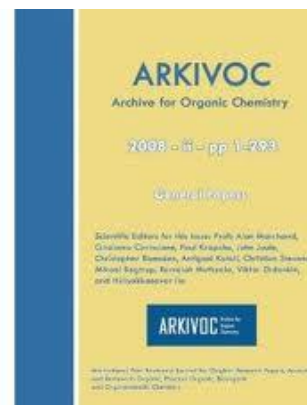
- You've written an article !!



(It could happen.)

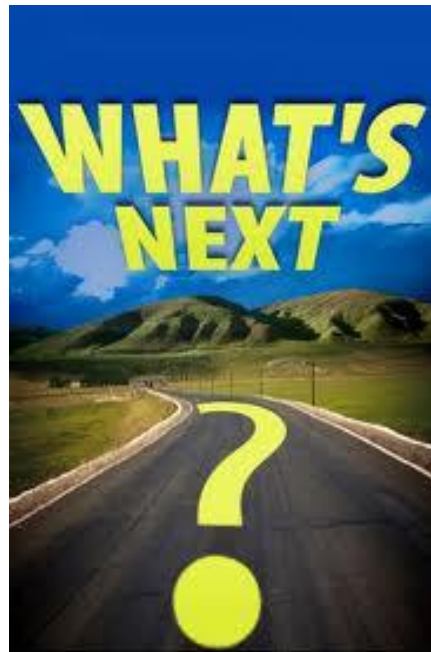
and also suppose ...

- Some journal wants to publish it
- !!



What happens next ?

- Well, there are several possibilities ...



Best case scenario



- They ask for --
 - “non-exclusive permission to publish”
- *You retain copyright and can publish elsewhere, post on your webpage or institutional repository, distribute to your classes, dramatize, set to music, ...*

Go for it !



More likely

- Journal sends “copyright transfer agreement”



- They get all rights, for all times, in all places, in all forms, including those yet to be invented.

Why do they do that ?

- “to ensure maximum distribution”
- “required by our charter”
- “to protect your contribution”
- “necessary to support our mix of business models”



Wonder Woman's
Lasso of Truth
says it's:



- *Because they can !*

~~A Toddler's~~ Rules of Possession

1. If I like it, it's mine.
2. If it's in my hand, it's mine.
3. If I can take it from you, it's mine.
4. If I had it a little while ago, it's mine.
5. If it's mine, it must **NEVER** appear to be yours in any way.
6. If I'm doing or building something, all the pieces are mine.
7. If it looks just like mine, it is mine.
8. If I saw it first, it's mine.
9. If you are playing with something and you put it down, it automatically becomes mine.
10. If it's broken, it's yours.

Traditional Publisher's

... **all copyright** in and to the Contribution, and **all rights therein**, including but not limited to the right to publish, republish, transmit, sell, distribute and otherwise use the Contribution **in whole or in part** in electronic and print editions of the Journal and in derivative works throughout the world, **in all languages** and **in all media of expression now known or later developed**....

... Mine ... Mine ... Mine ... Mine ...
Mine ... Mine ... Mine ... Mine ... Mine ...
Mine ... Mine ... Mine ... Mine ...

There may be some give-backs:

- Make copies for classroom teaching or sharing with research colleagues
- Include in thesis or dissertation
- Include in printed compilation of your works
- Present at conference
- Post a pre-published version on webpage or institutional repository



Read the Contract !



Before You Sign It !



Everything is Negotiable

- (before you sign)



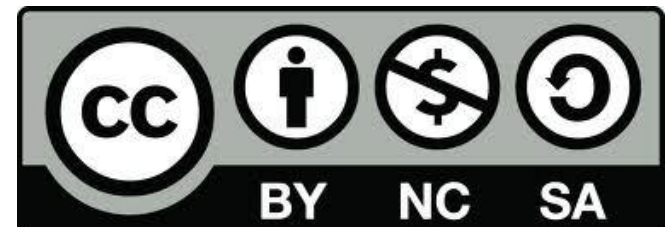
- Afterwards, nothing is.

The SPARC Addendum

- Developed by Scholarly Publishing and Academic Resources Coalition to attach to publisher contracts
- <http://www.arl.org/sparc/author/addendum.shtml>
- Declares precedence over base contract
- Takes back publication, re-use, and derivative rights
- Most publishers do not accept
- Can lead to extended negotiations and delays

Creative Commons licenses

- Many open-access journals now require the authors to adopt a Creative Commons (CC) license.
- This declares copyright by the author, but conveys all re-use rights to the world at large. There is no exclusivity or “protection.” So, yes you can re-use it, but so can anyone else.



creativecommons.org



A private Massachusetts-chartered 501(c)(3) tax-exempt charitable corporation, founded in 2001, with approximately \$3.5 million operating budget & \$5 million in assets.

Develops usage licenses to apply to everything from software, to film, to publications, and all types of intellectual property.



Campus Mandates



- Harvard, MIT, Kansas, et al. have adopted an “open-access policy” strategy.
1. Faculty are required to deposit final MS version of accepted articles in institutional repository.
 2. University asserts a prior right to distribute (and empower others to distribute) and “exercise all rights under copyright”
 3. Faculty author cannot convey “exclusive” publication rights to journal publisher
 4. Faculty authors may “opt out”



Author Rights You Want

- Re-publish
- Distribute to classes and colleagues
- Post on website or repository
- Control creation of derivative works
- Prevent unwanted uses



Just because **You Wrote It,**
doesn't mean **You Own It**



*I signed my likeness away.
Every time I look in the mirror, I have to send
George Lucas a couple of bucks.*

--Carrie Fisher



I. Copyright is ...

1. Important

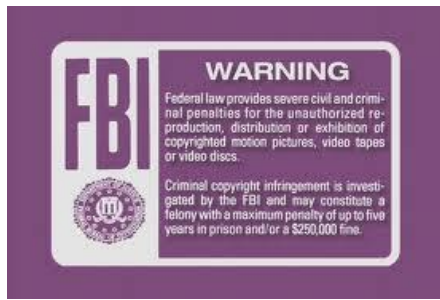


2. Confusing



3. A battleground

“Mr. Bono Goes to Washington”

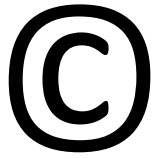


Copyright



-
- Is good when it protects authors' rights
 - Is bad when used by publishers to curtail authors' rights.
-
- CC licenses and campus mandates address these issues, but partially and imperfectly.

Copyright protects



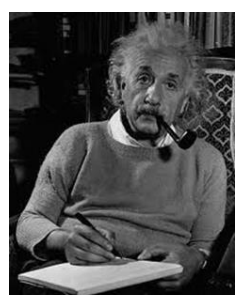
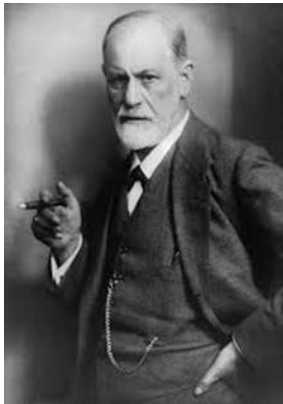
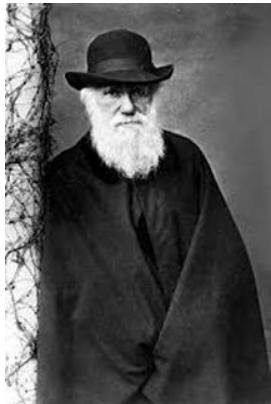
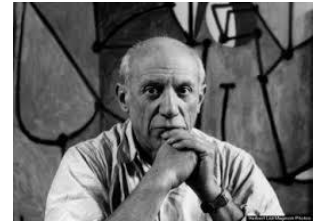
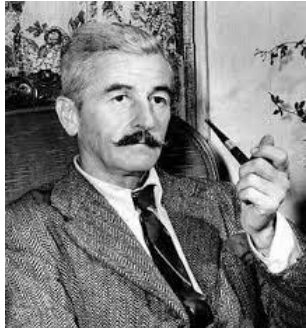
Original creators of intellectual property:

Writers

Artists

Researchers

Thinkers



But these creators ...

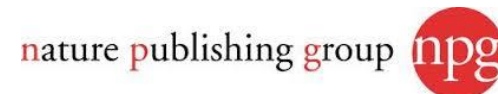
are required to surrender their rights in order to

- get published
- achieve tenure
- remain employed



Ownership of those rights ...

Passes to large multinational private corporations or societies



And those rights are administered

For the benefit and profit of the
secondary owners !!



Some publishers are also willing to

- Claim rights they do not legally hold
- Discourage or contest “fair use” of materials
- Collect fees for items they do not own
- Assert their rights at the expense of the author’s interests



Copyright education is needed to reclaim public and academic rights under:

- Public domain
- Fair use
- TEACH Act educational use
- Library preservation use



II. Publishing

In May 2013, the National Academy of Sciences sponsored a national forum on “Public Access to Federally Supported R&D Publications” in response to a memorandum issued by the White House Office of Science and Technology Policy (OSTP).

Researchers, librarians, and publishers all gave testimony, during which it became clear ...



Things Publishers Believe # 1:

“The present system
is working just fine.”

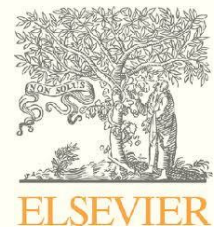


Road to publication

Reed Elsevier revenue (2012) = \$8.1 billion

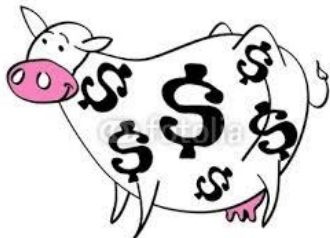
vs.

Nebraska state revenue (2012) = \$8.1 billion



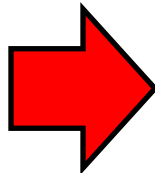
Things Publishers Believe # 2:

“The greatest threat is government interference.”



Things Publishers Believe # 3:

“Publishers have a right to own and monetize the intellectual property resulting from federally-funded research.”



Things Publishers Believe # 4:

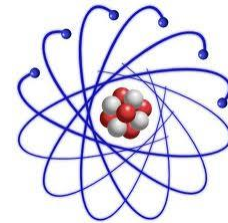
“Copy-editing, typesetting, and printing are worth more than scientific discovery.”



A B C D E F G H I
J K L M N O P Q R
S T U V W X Y Z
a b c d e f g h i j k l m n
o p r s t u v w x y z
1 2 3 4 5 6 7 8 9 0 . , ' "



greaterThan



Publishers' requirements

- Surrender copyright
- Wait up to 3 years for publication
- Restrictions on length, illustrations, notes, etc.
- Limited distribution; controlled forever
- High prices
- Subsidies, APC's, etc.
- Little or no feedback on readership & usage
- High rejection rates
- Bottom-line decision-making



Why libraries should become publishers

Because of the mind-set of publishers and the difficulty they have serving the faculty, library, and university communications needs.



3 Academic Presses vs. Georgia State Univ.

- The Copyright Clearance Center, on behalf of Oxford UP, Cambridge UP, & Sage Publications, sued Georgia State University alleging copyright infringement involving online access to course reserve readings.
- Of about 100 alleged infringements, the federal court threw out 95%, and decided in favor of Georgia State.



vs.



Amount of “fair use” defined !

- The court also gave us the first judicial criterion for what amount of use could qualify as “fair use”.
- It said:
1 chapter of a book, or up to 10% of the whole.
- The CCC and publishers’ organizations have talked of an appeal.
- Matls: <http://libguides.law.gsu.edu/gsucopyrightcase>

Transformative use: the Google Books decision

- Application to new uses that are beyond or outside and non-competitive with the original may be considered “fair use” ...

“so long as the copy serves a different function than the original work.”

Stepped up enforcement, criminal penalties, and the case of Aaron Swartz

- 26-year-old Internet activist and Harvard University research fellow (and former developer in Reddit, Creative Commons, and RSS) downloads thousands of articles from JSTOR by an unauthorized connection via an unlocked data closet at MIT. He was arrested and charged with 11 federal felony counts of wire fraud and computer fraud, with penalties of up to 50 years imprisonment.
- After repeated failures to negotiate a reduced plea, he committed suicide, Jan. 11, 2013.



Not strictly a copyright case

- Federal charges involved “wire fraud” and “computer fraud” under the 1986 Computer Fraud and Abuse Act.
- Prosecution has been widely questioned and criticized; even MIT and JSTOR were not in favor.
- Swartz had previous run-ins with the FBI, DOJ, and Secret Service over his downloading and open release of public documents, including Library of Congress data and federal court records. His published *Guerilla Open Access Manifesto* seems also to have played a role.

But the federal government has done some good things ...



- PubMed Central has negotiated a workable path among interests of authors/researchers, publishers, and the general public.
- Some burden and the ultimate responsibility is on the researchers, though many publishers have stepped up with services that allow them to control exposure of content, promote their products, and collect additional revenues.

More to come ?

- Now the White House OSTP will soon issue guidelines for other federal granting agencies, besides the NIH.
- What those will be and how they will be reflected in agency policies and rules is yet to be seen.



Two Plans

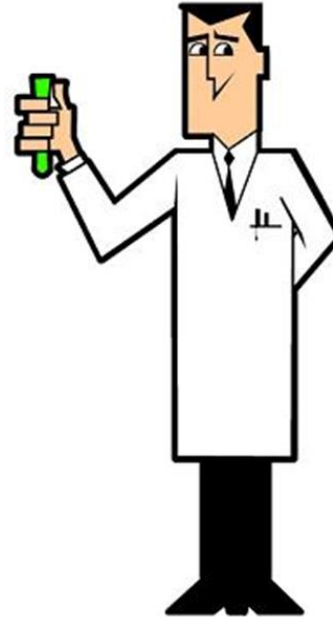
- The publishers have one plan, called **CHORUS** (Clearinghouse for the Open Research of the United States)
- The libraries have a different plan, called **SHARE** (SHared Access Research Ecosystem).
- Publishers want to hold and control content.
- Libraries want central or federated archives.

Open Access will fundamentally
change scholarly publishing.



The next 20 years will see ...

... an ongoing struggle for control of the intellectual property produced by university faculty (often with government funding).



The contenders will be:

1. the corporate publishers
2. the universities
3. the public / the users
4. the faculty themselves



And, the Winners will be ...



... Wait for it ...



Sorry, time is up!



Thank you for your patience.



LOADING



Contact

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